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The Virginia State Banker

Regulatory news for Virginia State-chartered Banks

E.J. Face, Jr., Commissioner

Bureau of Financial Institutions - State Corporation Commission

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COMMISSIONER FACE ATTENDS SUPERVISORS' MEETING

Commissioner Joe Face traveled to Washington, DC March 26-27 to take part in a series of bank regulatory meetings organized by the Conference of State Bank Supervisors (CSBS).

Mr. Face, who has served as commissioner since 1997, discussed myriad issues currently facing the nation's banking industry such as payday lending, predatory lending, privacy, interstate banking, and federal pre-emption of state banking laws.

"Through CSBS, state bank regulatory agencies and state-chartered banks continue to champion a system that offers competitive chartering options and efficient and effective supervision," Commissioner Face said.

While in Washington, Mr. Face joined bank commissioners from other states in meetings with Federal Reserve Chairman Alan Greenspan, Federal Deposit Insurance Corporation Chairman Don Powell, Treasury Department Assistant Secretary for Financial Institutions Wayne Abernathy, House Financial Services Committee Chairman Michael Oxley (R-OH) and Ranking Member Barney Frank (D-MA), and representatives of the Senate Banking Committee. Sen. Chuck Hagel (R-NE), who serves on the Senate Banking Committee, addressed the group at dinner.

Commissioner Face noted that the mission of CSBS is to advance and strengthen all state banking departments and to ensure the continued viability of state-chartered banks, which comprise 71 percent of the bank charters nationwide.

CSBS serves the banking industry by optimizing the authority of individual states to determine the activities of their financial institutions, enhancing the professionalism of state banking departments and their personnel, and ensuring that all banks continue to have the choice and flexibility of the state charter in the new era of financial modernization. The organization was founded in 1902.

FALL BANK DIRECTORS' COLLEGE

The Fall Bank Directors' College will begin at noon on Wednesday, November 5, 2003 and end at noon on Thursday, November 6. The Directors' College will be at The Hotel Jefferson in Richmond.

VACB will again handle the registration process. Conference brochures will be mailed in early fall.

The November session will review the essential elements geared toward the new bank director. This information may also provide a significant learning experience for the more experienced director.

The Virginia State Banker is published quarterly by the Virginia Bureau of Financial Institutions to provide useful information to the banks and savings institutions that it regulates, and any of their related interests. Reader comments and suggestions are welcome and should be addressed to Ginger Sandler, Bureau of Financial Institutions, P.O. Box 640, Richmond, Virginia 23218-0640, or via e-mail gsandler@scc.state.va.us.

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1903 ~ 2003
CELEBRATING A CENTURY OF SERVICE TO THE COMMONWEALTH

The creation of the Virginia State Corporation Commission in the early years of the 20th century was a decisive shift in the organization of state government. Regulatory decision making moved from the legislature to a permanent body which could hire specialists and conduct inquiries. The SCC was organized as a separate department of state government with its own legislative, administrative, and judicial powers. As the decades went by, the Commission was given increased regulatory authority over diverse business and economic interests. Because of its unique structure and duties, it has been described as the "fourth branch of government" and "the most powerful regulatory body in America."

In 1901, there was significant support for the creation of a regulatory body that could control railroad companies and fix rates to protect the people of Virginia. Mr. A. Caperton Braxton, chairman of the corporations committee at the constitutional convention in 1901, advocated the formation of a government organization with the authority to administer equal justice between two opposite interests.

The 1902 constitution authorized the appointment of three commissioners by the Governor and confirmed by the General Assembly for the regulation of transportation and transmission companies. Instead of applying the accepted doctrine of the separation of powers in government, the framers of the constitution authorized an organization with its own legislative, administrative, and judicial powers. The Commission could make its own rules and enforce them. No state court except the Virginia Supreme Court could review or reverse any of its rulings.

When the General Assembly convened in January 1903, the legislature provided $500 for the Commission to prepare offices and authorized it to hire a clerk, a first assistant clerk, a bailiff, and a stenographer "who shall also have a typewriter."

In its first year of service, the Commission reported that it granted 482 charters to corporations and generated $488,271 in revenue for the Commonwealth while spending a budget of under $24,000. Processing consumer complaints was a significant Commission activity from the very beginning, the SCC reported. "A very large number of complaints against railroads were informally brought to the attention of the Commission...and all...were promptly taken up by the Commission and proper relief given in all cases in which the complaints were just [sic] founded."

Within three years the Commission's regulatory authority was broadened by the General Assembly with the creation of the Bureau of Insurance. That same year, the SCC was also authorized to investigate cases of suspected arson. The regulation of banking was added in 1910, and fixing the rates of public utilities began in 1914. The supervision of the sale of securities (Blue Sky Law) started in 1918, and the regulation of transportation by motor vehicle began in 1923.

Since the beginning of the Commission, the legislature has approved more than 60 expansions of SCC authority. Some of the unusual areas of authority were the licensing of dams, the registration of laundry marks, the regulation of parachute jumping, and the regulation of sight-seeing and charter party boats. The Commission even had control over the tolls charged on Richmond's Boulevard Bridge. Built in 1925 by a development company, the bridge was privately owned until 1969. When the owners wanted to reduce the toll from a dime to a nickel, they had to seek the permission of the SCC. In a 1975 *Richmond Times-Dispatch* series on the SCC, former Commissioner H. Lester Hooker was asked why the General Assembly continued to hand the regulatory agency new responsibilities. "Well, you know," he replied, "anything they didn't know what to do with, they'd give to the SCC." Former Wisconsin Public Service Commissioner Arthur L. Padrutt, testifying to a legislative panel in the 1970s offered a summary of the SCC and its activities: "One can view it only with a sense of fatigue."

With its impact on so many business and economic interests in Virginia, the SCC confronted its share of controversy in its first century. During the first decade, there were continual disputes between shippers and railroads. In 1918, the SCC was criticized by its own Commissioners for having an inadequate staff for complex regulatory tasks, a

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CELEBRATING A CENTURY OF SERVICE

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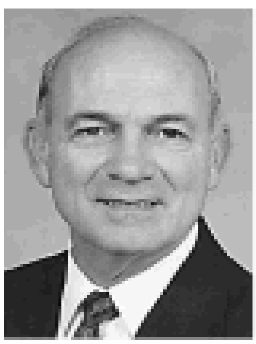
criticism that reflects a persistent challenge for the Commission. As new problems arose with new industries, there was a need for new regulations, and the Commission was given more authority. Controversy was often followed by a period of stability.

Despite the dramatic industrial, social, and demographic transformation in Virginia, the foundation of the SCC has not changed since the first three commissioners took the oath of office on March 2, 1903. It remains an independent department of state government that promotes and protects the public interest. It continues to be vested with legislative, administrative, and judicial authority. No other state in the country consolidates so many regulatory functions into one organization. While always open to adapting to change, the stability of the SCC provides an opportunity for all to be heard on any matter within the Commission's authority, and to do so in a timely manner. Its tasks may be highly technical in nature, but the SCC has maintained a simple structure to meet the demands of an evolving regulatory environment.

- adapted from a story by the SCC's Andrew Farmer



IN MEMORIAM

Former bank examiner Frank Eugene "Gene" Young passed away April 24, 2003 following a battle with cancer.

He is survived by his wife, Eleanor; his daughters, Susan and Sandra; and two grandchildren, David and Amanda.

Mr. Young, fondly known as "Homer" among fellow examiners, retired in 1996 after serving 26 years with the Bureau of Financial Institutions.

FDIC AND CSBS PARTNER TO PROMOTE FINANCIAL EDUCATION

On March 26, 2003, the Federal Deposit Insurance Corporation (FDIC) and CSBS formed a Partnership Alliance to promote financial education using *Money Smart*, the FDIC's financial education curriculum.

The FDIC created the *Money Smart* training program a few years ago to help adults outside the financial mainstream to enhance their money management skills and to develop positive relationships with financial institutions. *Money Smart* features a comprehensive guide for instructors and resource material for students. It includes ten instructor-led training modules covering basic financial topics. The modules increase in complexity; however, they may be presented in any order or in any combination, depending on the interests and knowledge of the target audience.

The goal of the *Money Smart* partnership between the FDIC and CSBS is to extend the reach of this financial education program. Currently, several states have introduced the *Money Smart* program into public school classes, while other states have used the program for direct outreach by the state banking departments into their local communities. CSBS will begin providing an overview of the *Money Smart* program in state examiner and bank director seminars.

The FDIC and CSBS each recognize the need for financial education and stand ready to help your communities implement this program. You may order copies of the *Money Smart* curricula from the FDIC Web site at **www.fdic.gov**. If you have additional questions, please contact Senior Community Affairs Specialist Jaime Perez at (202) 898-6653 or Vice President of Regulatory Affairs Alan Cox at (202) 728-5723.

GUIDANCE FOR TROUBLED INSTITUTIONS

The following guidance issued by the Federal Reserve is applicable to all Virginia-chartered banks, since the FDIC has similar restrictions on troubled institutions. While we obviously hope none of our banks ever gets in this position, we want to call the item to your attention. The Bureau would view any violation of these requirements as an unsafe and unsound practice, subject to the issuance of a Notice and Warning under Virginia Code § 6.1-92.

Federal Reserve Issues Guidance for Troubled Institutions: The Federal Reserve Board issued guidance to remind Reserve Bank examiners and staff as well as banking organizations about certain restrictions placed on institutions determined to be in troubled condition regarding "golden parachute" payments and appointments of new directors and senior executive officers. The restrictions relate to institutions that have a composite rating of "4" or "5," are subject to a cease and desist order or any other written document that requires action to improve the institution's financial condition, or are otherwise informed by the Federal Reserve that they are in "troubled condition."

In general, FDIC regulations prohibit financial institutions and their holding companies from making golden parachute payments except in certain circumstances. A state member bank may make or enter into an agreement to make a golden parachute payment only if consent is given by the Federal Reserve and (1) there is written concurrence from the FDIC; (2) the FDIC agrees to the amount and terms of the proposed payment as part of an agreement to hire competent management; or (3) there is an agreement for severance not to exceed 12 months' salary in the event of an unassisted change of control. In the event a financial institution enters into an agreement without prior regulatory approval, appropriate supervisory action will be taken, possibly including requiring the offending party to reimburse the institution for the prohibited payment.

Any state member bank or bank holding company that is in troubled condition, or does not meet minimum capital standards, must provide 30 days' written notice to the Federal Reserve prior to appointing any new director or senior management, or to changing the responsibilities of any current senior staff officer.

For more information on the guidance, please refer to **http://www.federalreserve.gov/boarddocs/SRLETTERS/2003/sr0306.htm.**

SPRING DIRECTORS' COLLEGE A SUCCESS

For the first time, the Spring Directors' College was held in two locations: Richmond and Abingdon. The Richmond session was held April 2 and 3 at The Jefferson Hotel, and the Abingdon session was held May 7 and 8 at the Martha Washington Inn.

Topics at the Spring program included audit in an age of technology and the Sarbanes-Oxley Act of 2002. Presentations were made by representatives from the Bureau and the Federal Reserve.

Commissioner Face led a discussion on what regulators and others expect of bank directors in today's fast-changing times. Gary Sullivan of Galaxy Computer Services, Inc. reviewed director responsibilities as they relate to the information protection requirements of the Gramm-Leach-Bliley Act.

Jack Phelps of the FDIC talked about trends and conditions in the local economy and banking industry that could pose a risk to insured institutions.

The session concluded when Mary Bannister and Mike Beavers of the SCC's Bureau of Insurance explained what banks need to know before getting into the insurance business.

IMPORTANT TELEPHONE NUMBERS

- Banks and Savings Institutions (804) 371-9704
- Consumer Finance and Mortgage Companies (804) 371-9701
- Licensing (applications, name changes, annual reports) (804) 371-9690
- Consumer Complaints (804) 371-9705
- Corporate Information (SCC Clerk's Office) (804) 371-9733
- Bureau's FAX number (804) 371-9416
- TDD (804) 371-9206

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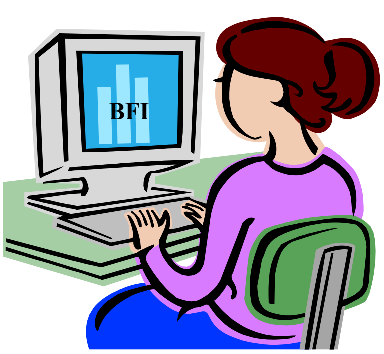

Check out our Web site at www.state.va.us/scc/division/banking.